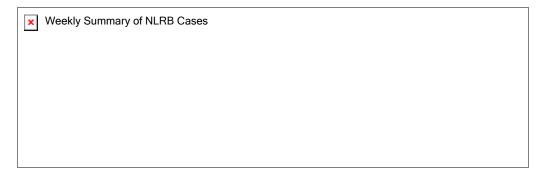
ABOUT THE WEEKLY SUMMARY

The Weekly Summary of NLRB cases, as the name implies, is a publication that summarizes each week all published NLRB decisions in unfair labor practice and representation election cases, except for summary judgment cases. It also lists all decisions of NLRB administrative law judges and direction of elections by NLRB regional directors. Links are established from the weekly summary index to the summaries and from the summaries to the full text of the decisions.



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CASES SUMMARIZED

SUMMARIES CONTAIN LINKS TO FULL TEXT

Raven Government Services, Inc., Ft. Worth, TX Stemlit Growers, Inc., Wenatchee, WA

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Stemlit Growers, Inc. (19-CA-26777; 336 NLRB No. 95) Wenatchee, WA Nov. 5, 2001. Affirming the administrative law judge, the Board dismissed the complaint alleging that the Respondent violated Section 8(a)(3) of the Act by suspending and discharging employee Asuncion Santiago for union activity, following a history of resistance to Teamsters Local 760. In defense, the Respondent contended it suspended and then discharged Santiago pursuant to company policy for a violent act-deliberately pushing his packing cart towards another employee. [HTML] [PDF]

Members Liebman and Walsh found it unnecessary to pass on the judge's finding that the General Counsel failed to satisfy his initial burden under *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), to establish that Santiago's union activity was a motivating factor in the Respondent's decision to suspend and discharge him. Assuming the General Counsel met his threshold burden under Wright Line, they agreed with the judge that the Respondent demonstrated it would have suspended and discharged Santiago even in the absence of his union activity.

Chairman Hurtgen would affirm the judge's decision in its entirety, including his finding that the General Counsel failed to establish that Santiago's union activity was a motivating factor in the Respondent's decision to suspend and discharge him.

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charge filed by Teamsters Local 760; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Wenatchee, Jan. 31 and Feb. 1, 2001. Adm. Law Judge Jay R. Pollack issued his decision June 20, 2001.

* * *

Raven Government Services, Inc. (16-CA-18516, et al.; 336 NLRB No. 99) Ft. Worth, TX Nov. 6, 2001. The Board granted the Acting General Counsel's motion for clarification or modification of the underlying decision and order reported at 331 NLRB No. 84 (2000), and clarified that the Respondent shall make whole unit employees laid off or discharged as a result of its unlawful unilateral changes in accordance with F.W. Woolworth Co., 90 NLRB 289 (1950), and for other losses suffered as a result of the unlawful changes in accordance with Ogle Protection Service, 183 NLRB 682 (1970). In the prior decision, the Board held the Respondent violated Section 8(a)(5) and (1) of the Act by among others, making various unilateral changes and ordered the Respondent to make the unit employees whole for any losses suffered in accord with Ogle Protection Service, rather than F.W. Woolworth Co., cited by the judge. [HTML] [PDF]

The Board clarified the prior order, agreeing with the Acting General Counsel that the remedial modification in the original decision and order, failed to account for undisputed record evidence that the Respondent's unlawful unilateral elimination of certain job classifications had resulted in the layoff or discharge of unit employees. It also agreed the original Order should include the traditional remedial requirement, independent of the backpay remedy, requiring the Respondent to make whole, employees discharged or laid off as a result of its unlawful unilateral action by offering immediate reinstatement to their former jobs.

The Respondent argued the Acting General Counsel's motion was incorrectly filed under Section 102.49 of the Board's Rules and Regulations and is actually a motion for reconsideration that should be denied as untimely filed under Section 102.48(d). Alternatively, the Respondent argued if the Board grants the Acting General Counsel's motion, it should also grant the Respondent's motion to modify the underlying decision by reconsidering whether a management-rights clause gave the Respondent unilateral authority to eliminate certain job classifications and to lay off affected employees.

Denying the Respondent's motion, the Board ruled the Acting General Counsel properly filed the motion under Section 102.49, citing *Dorsey Trailers, Inc.*, 322 NLRB 181 (1996), which dealt with the specific issue presented here. It added: "As a general matter, of course, the Board has full authority over the remedial aspects of its decisions, even in the absence of exceptions. See, e.g., *Indiana Hills Care Center*, 321 NLRB 144 fn. 3 (1996); Dorsey Trailers, supra, 322 at 181 fn. 4. The remedial modifications we make today properly correct inadvertent errors by the Board and the judge."

The Board found *Community Medical Services*, 239 NLRB 1244 (1970), and *NLRB v. Selvin*, 527 F.2d 1273, 1276 (9th Cir. 1975), cited by the Respondent, do not support its argument, stating: "In both cases, the time requirement for filing of the disputed motions were controlled by Section 102.48(d), and each decision drew a clear distinction between motions filed under that section and motions, or actions taken sua sponte by the Board under Section 102.49. Therefore, we find that the Acting General Counsel's motion properly raised a remedial issue."

(Chairman Hurtgen and Members Liebman and Walsh participated.)

* * *

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Palagonia Bakery Company, Inc. (Food & Commercial Workers Local 348-S) Brooklyn, NY Nov. 2, 2001. 29-CA-23632, et al.; JD(NY)-52-01, Judge Steven Fish.

Grand Industries, Inc. (Carpenters, Great Lakes Regional Industrial Council) Grand Rapids, MI Nov. 7, 2001. 7-CA-42513, 42680; JD(ATL)-70-01, Judge George Carson II.

The Wackenhut Corporation (an Individual) Livonia, MI Nov. 7, 2001. 7-CA-43705-1, -2; JD-146-01, Judge David L. Evans.

B & C Contracting Co. (Carpenters, Northwest Ohio District Council) Kissimmee, FL Nov. 7, 2001. 8-CA-29634(E), 29914 (E); JD-147-01, Judge Earl E. Shamwell Jr.